Supreme Court, U.S.
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No. 04-1283

IN THE
Supreme Court of the United States

KIMBERLYE FINCH,

Petitioner,

v.

EDDIE LEE GALAWAY, ADMINISTRATOR, ON BEHALF OF ESTATE OF BRADFORD WAYNE GALAWAY,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

REPLY BRIEF OF PETITIONER

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REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Respondent agrees that there is a conflict among the circuits as to the question presented: whether the identity of a beneficiary of an ERISA-governed plan is controlled by the plain language of ERISA, 29 U.S.C. § 1104(a)(1)(D), and its reliance on the four corners of the concomitant written plan documents so designating, as the Sixth Circuit and some other lower courts have held, or by evolving and developing federal common law, as the Fifth Circuit and some others have held. (Opp. at 2, 12) Respondent, however, would prefer for this Court to leave employees in the Sixth Circuit (and possibly the Second Circuit and a number of federal districts) who are subject to ERISA plans with what Respondent considers to be an egregious result. (*Id.* at 12) Respondent also would leave employees and plan administrators within the First, Third, Ninth, Tenth, Eleventh, D.C., and (possibly) Second Circuits without any certainty as to whether they can expect a strict application of ERISA's plain textual commands to limit distributions to persons named in the plan documents or reliance on federal common law that in turn borrows from preempted state law. (*Id.* at 6-7, 12) Notwithstanding Respondent's own lack of concern for the continuing uncertainty on this issue across the country, in view of the very real burdens imposed by the current state of the law, Petitioner anticipates that plan administrators will be appearing as *amici curaie* in support of this petition.

While attempting to downplay the significance of the circuit split on the question presented, Respondent's Opposition seeks to put forward the best arguments on the merits of the question, which, while ultimately invalid and unsound, only serve to confirm the importance of this Court's granting the petition for a writ of certiorari and resolving this issue. For instance, contrary to Respondent's central argument, Congress did not "select" the development of a federal common law when it enacted a statute that

dictates that ERISA plan administrators must administer plans "in accordance with the documents and instruments governing the plan," which plans, according to ERISA itself, "shall be established and maintained pursuant to a written instrument" and "shall ... specify the basis on which payments are made to and from the plan." 29 U.S.C. §§ 1102(a)(1), 1102(b)(4), 1104(a)(1)(D). (Opp. at 6, 8) However, a majority of the federal Courts of Appeals that have considered this issue have reached this erroneous conclusion.

Respondent also remarkably argues that plan administrators' interests are of no moment in construing the ERISA statute, which Respondent claims was enacted solely for the benefit of employee beneficiaries. (Opp. at 9) This unsupported assertion flies in the face of this Court's reasoning in its recent decision in *Egelhoff v. Egelhoff*, 532 U.S. 141, 147-51 (2001), which considered "the congressional goal of 'minimizing the administrative and financial burdens' on plan administrators" while holding that a state statute that provided for the automatic revocation upon divorce of the designation of a spouse as the beneficiary of an ERISA-governed employee benefit plan is preempted by ERISA. It also ignores this Court's observation that plan administrators' "costs of delay and uncertainty can be passed on to beneficiaries, thereby thwarting ERISA's objective of efficient plan administration." *Id.* at 149 n.3.

Respondent further asserts that the adoption of federal common-law waiver rules requiring a search for and analysis of divorce decrees and property settlement agreements poses no greater burden on ERISA plan administrators than does administrators' review of Qualified Domestic Relations Orders ("QDROs"). (Opp. at 9) In fact, this argument has been discussed and repudiated elsewhere for ignoring fundamental distinctions between the burdens imposed by reviewing statutorily-prescribed and regulated QDROs and by seeking out and analyzing purported waivers incorporated

into divorce decrees and other documents falling outside of ERISA's statutory framework. *Estate of Altobelli v. IBM Corp.*, 77 F.3d 78, 83 (4th Cir. 1996) (Wilkinson, J., dissenting); *Fox Valley & Vicinity Constr. Workers Pension Fund v. Brown*, 897 F.2d 275, 283 (7th Cir. 1990) (en banc) (Easterbrook, J., dissenting); George A. Norwood, *Who is Entitled to Receive a Deceased Participant's ERISA Retirement Plan Benefits—an Ex-Spouse or Current Spouse? The Federal Circuits Have an Irreconcilable Conflict*, 33 GONZ. L. REV. 61, 93-95 (1997-98).

Indeed, it is not difficult to imagine other scenarios outside of divorce property settlements in which persons other than a named plan beneficiary may claim an entitlement to plan benefits on the basis of equity. Administrators' burdens will only increase if, under Respondent's preferred approach, administrators are required in such circumstances to go beyond governing plan documents and instruments expressly naming or identifying a beneficiary of an ERISA-governed plan and to follow various federal common-law rules for determining the identity of the proper beneficiary.

Respondent's Opposition does not join issue with, and cannot refute, the inescapable conclusion that the worst of all possible worlds for ERISA's goals of predictability, uniformity, certainty, and simplicity of plan administration currently obtains—one in which the current circuit split requires plan administrators (whose administrative and financial burdens are "ultimately borne by the beneficiaries," *Egelhoff*, 532 U.S. at 149-50) to determine the proper beneficiary in a divorce context based on the governing plan documents and instruments in some jurisdictions and based on varying formulations of federal common-law rules in others. Furthermore, none of Respondent's various arguments changes the fact that the split among the Courts on this issue is deep and will not resolve itself, even after *Egelhoff*. Whatever arguments can be advanced for overriding the employee's own plan designations for

"equitable" reasons, the importance of this issue and the need for this Court's review remain unrefuted by Respondent's Opposition.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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